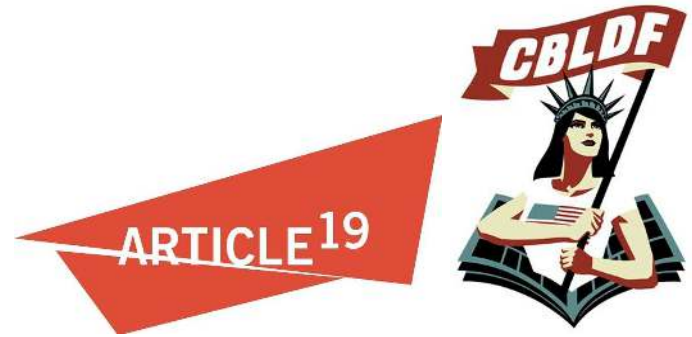




**NATIONAL
COALITION
AGAINST
CENSORSHIP**



Denton Howard
Executive Director
INHOPE
Bos en Lommerplein 270-300
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January 20, 2020

Dear Mr Howard,

INHOPE members reporting artwork as child sexual abuse

As the international association of Internet reporting hotlines, INHOPE and its members are charged with a vital responsibility to help rid the world of child sexual abuse material (CSAM), and to ensure that those who produce and share it are reported to authorities. Because of the gravity of the content involved, most hotlines are either government-run or are granted statutory authority to act without the safeguards that the public would normally demand for a body exercising such sweeping censorship powers.

That's why we are very concerned that several of your members are misusing this important and trusted public charge to censor works of art, and to criminalize those who create and produce it. These actions disproportionately affect those from marginalized artistic and LGBT communities, and have resulted in the arrest and imprisonment of people who are innocent of any wrongdoing against children. One of these is a 17 year old Costa Rican girl, who was arrested for posting

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drawings to her blog, on a referral from the Canadian Center for Child Protection.¹ In another case, a Russian transgender woman was sentenced to three years imprisonment for posting cartoon images to social media.²

In May 2019 the UK's Independent Enquiry into Child Sexual Abuse heard that reports received by the National Crime Authority from the United States hotline NCMEC included large numbers of non-actionable images including cartoons, along with personally identifiable information of those responsible for uploading them.³ According to Swiss police, up to 90% of the reports received from NCMEC relate to innocent images.⁴

We ask you to communicate to INHOPE members that this is not acceptable. The responsibility that they have been entrusted with is a responsibility to protect children from the direct harm that occurs when photographs and videos of their sexual abuse are disseminated. International human rights law allows a narrow justification for the criminalization of such abusive content. But according to Daniel Møgster from the United Nations Office of the High Commissioner for Human Rights who spoke on this topic in October, the same justifications are much weakened in the case of virtual images that do not depict a real child:

Even if the state might have a legitimate objective for restricting this type of material, you still have the principle of legality, and as previously mentioned, there is a requirement that laws be clear, especially criminal laws. ... It is [also] crucial for any imposition of criminal sanctions that it doesn't overreach, and the state has the burden of proof to justify that any measure is in fact covering no more than what it needs to cover.⁵

This does not mean that more proportionate steps cannot be taken to prevent the dissemination of offensive art. For example, images that infringe an Internet platform's terms of service can be removed, and platforms should support the tagging of explicit content to allow it to be hidden from children and from others who do not wish to view it. Prostasia Foundation has a set of guidelines called No Children Harmed that suggest best practices for how to deal with such

¹ Rocio, Sandi (May 17, 2019). Joven de 17 años difundió por Internet 146 dibujos pornográficos de niños. *La Teja*, available at <https://www.lateja.cr/sucesos/video-joven-de-17-anos-difundio-por-internet-14/66NV7C4YABAOPKTAU3YJ43BC2M/story/>.

² Korelina, Olga and Kohen, Hilah (December 2, 2019). Russian trans woman sentenced to likely fatal three years in prison for posting manga on social media. *Meduza*, available at <https://meduza.io/en/feature/2019/12/02/russian-trans-woman-sentenced-to-potentially-fatal-three-years-in-prison-for-posting-manga-on-social-media>.

³ IICSA open session transcript for 20 May 2019, pages 9-10, available at <https://www.iicsa.org.uk/key-documents/11537/view/open-session-transcript-20-may-2019.pdf>.

⁴ Stalder, Philippe (September 29, 2019). Familienfotos landen bei der Bundespolizei. *SonntagsZeitung*, available at <https://epaper.sonntagszeitung.ch/index.cfm/epaper/1.0/share/email?defId=10000&publicationDate=2019-09-29&newspaperName=SonntagsZeitung&pageNo=12,13&articleId=-1&signature=3F239AF877D76F35F6A0B26CF9D84330BAA559BA>.

⁵ See Prostasia Foundation Newsletter #15, available at https://prostasia.org/?na=archive&email_id=54#.

content, without treating it as equivalent to images of real children being sexually abused. INHOPE members should not conflate art with such abuse images.

We ask that INHOPE members prioritize the removal of images that depict actual children being sexually abused, rather than the censorship of images that are merely considered to be immoral or offensive. Specifically, artistic images should not be added to image hash lists that INHOPE members maintain, and should not be reported to authorities, unless required by the law where the hotline operates.

The extensive powers that INHOPE members enjoy are a reflection of the gravity and importance of their role. However as a matter of human rights law, the exercise of those powers is difficult to justify except when they are directed against actual images of child sexual abuse. In particular, the use of those powers to censor artistic images has resulted in the persecution of stigmatized minorities. We call on you and your members to end this practice immediately, and to return to their original important role of eliminating CSAM—images of real children being sexually abused.

Yours sincerely,

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Article 19

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